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Sent: Tuesday, September 02, 2014 10:43 AM
To: Maier, Brent
Cc: Diamond, Jane;Woo, Nancy;Kemmerer, John;Montgomery, Michael;Gullatt, Kristin
Subject: WTR Div Hot Topics [FINAL] - ECOS Fall Mtg, Santa Fe, NM

Gov. Janice Brewer – Arizona

Rosemont Copper Mine Project: The new ~5,000 acre open-pit mine would produce nearly 10% of US copper demand, yet would impact habitat for 10 federally listed species and draw down groundwater that feeds pristine state- and federally-protected surface waters off-site. A 404 permit is needed for filling the 40 acres of desert streams at the facility itself. Arizona Governor Brewer has written to the Corps in support of the project. Arizona DEQ must process a CWA section 401 water quality certification, which was drafted for public comment in February and remains pending. Many issues impacting these CWA decisions remain in flux. The USFS, the NEPA lead, released the FEIS on 12/13/13, which did not address EPA's concerns (principally CWA) that led to our "EU-3" rating of the draft. USFS granted an indefinite extension on formal referral to the CEQ while the CEQ convenes a regular senior-level interagency dialog among the EPA, USFS, USFWS, Corps of Engineers and other federal decision makers. On 5/16/14, FWS wrote the Forest Service that reinitiating formal consultation is necessary, due to growing evidence that impacts to listed and proposed species will be severe. The Corps notified Rosemont on 5/13/14 that the 404 final mitigation plan is substantially deficient (even though the Corps is not requiring mitigation for the indirect effects to WOTUS from groundwater drawdown, a position that remains open to potential 404 elevation proceedings). In addition to the CEQ talks, Region 9 is actively participating in technical workgroups related to the ESA consultation; no federal decisions are anticipated this calendar year.

Gov. Jerry Brown – California

Drought Response Strategy for California: The drought emergency of 2014 has galvanized new interest in water conservation, irrigation efficiency, wastewater recycling, groundwater replenishment, and potable re-use. EPA is working with all levels of government, tribes, and NGOs to expand and scale-up improved water management approaches, sustainable infrastructure, and water saving technologies. Region 9 is identifying tools and incentives that can be translated into direct actions to address the immediate crisis while building long-term resiliency to future droughts and climate change. These include the expenditure of loans and grants derived from the State Revolving Funds (capitalized by EPA and administered by the State), EPA's WaterSense program – a private sector partnership to improve water-use efficiency in homes and gardens, the Federal Green Challenge to save water and energy at federal facilities, and the Climate Change Adaptation Implementation Strategy to assist communities region-wide with planning for an uncertain future. Under the SRF alone, the State of California is offering \$800 million in reduced interest loans to advance water recycling projects over the next three years.

California Area Tribes and Drought: Region 9 is coordinating with CA Area Indian Health Service to assess the severity of the drought on tribal DW systems. IHS is currently assisting the following CA Tribes with emergency funds (\$50,000) due to extreme low water levels: Enterprise, Cortina, Tule River, Old Sherwood and Ione. In addition, the following CA Tribes have declared a tribal state of emergency due to drought: Hoopa Valley, Karuk, Yurok, Tule River and Sherwood Valley. Through the GAP Program, we can support funding a number of the "Recommended Best Management Practices" as described in the IHS Drought Assessment Form. Eligible activities may include those that support the Tribe's overall

assessment of vulnerability and capacity-building efforts to develop a responsive environmental program. Specific eligible work may include development of a Drought Contingency Plan for Tribal lands, collecting data and information on Tribal-wide water systems to inform further analysis, conducting associated public education and outreach efforts, coordinating with other jurisdictions (federal, state, local), developing or revising codes and ordinances that govern water use and conservation, and evaluating and/or revising the Tribal rate structure.

California Drinking Water Program Transfer: Effective July 1, 2014, the State of California transferred its drinking water program, including the DWSRF, from the Department of Public Health to the State Water Resources Control Board. We have received the appropriate certifications from the State Attorney General's office regarding the transfer. The SWRCB is now responsible for implementing the Corrective Action Plan for the DWSRF resulting from our notice of non-compliance for failure to expend their DWSRF funds. The State has met or exceeded all milestones and deadlines in the Corrective Action Plan thus far. We will continue to work with the SWRCB to ensure a smooth transition of the drinking water program and full implementation of the corrective action plan.

Increasing Access to Safe Drinking Water for Small Communities in California: Approximately 57,000 persons (<1% of the state population) are served by approximately 2300 small community water systems that do not meet standards established to protect public health. 25% of these systems are in California's Central Valley, and one-quarter of them violate one or more health-based drinking water standards, more than double the noncompliance rate of small systems statewide. The state is modifying its infrastructure funding programs to provide alternative financing options to support small system planning, feasibility and construction needs, and projects a 1% annual reduction in small system noncompliance for each of the next 3 years (63 small water systems would return to compliance by 12/31/14).

San Francisco Bay-Sacramento/San Joaquin Delta: EPA is contemplating two major actions within the 2014-2015 timeframe:

(1) Bay Delta Conservation Plan (BDCP): On 08/26/14, EPA sent detailed comments to NMFS regarding the Draft Environmental Impact Statement (DEIS) for the proposed project (released in December 2013). The Agency withheld a formal rating on the DEIS in response to a decision by the lead federal agencies (NMFS, USFWS, and USBR) to prepare a supplemental DEIS to address many substantive, outstanding issues raised by EPA, other agencies, and NGOs. EPA's primary concern is that the proposed project would permanently degrade water quality in the Delta, and further erode protections for designated uses such as fish and shellfish propagation. The California Department of Water Resources is the lead agency for the State and has been the stakeholder most resistant to problem-solving dialogue. While the proposed project is framed as a "conservation plan", it is more importantly an engineering plan entailing the construction and operation of two ~35 mile long tunnels that would divert water directly from the Sacramento River in the north for conveyance under the Delta to existing federal and State pumping plants in the South Delta. From there, the water will be sent, as it has been for decades, to the San Joaquin Valley for farming, and to other points southward for municipal and industrial consumption. A recent study by the University of California concluded that the State Water Board and its predecessors have allocated 5x the available supply of freshwater; so the State has created a drought of 'perpetual perception' in the minds of stakeholders because more has been promised than what nature can sustainably deliver.

(2) Bay Delta Water Quality Control Plan (Bay Delta WQCP): EPA is working with the California State Water Resources Control Board (State Water Board) on a comprehensive revision to the Bay Delta WQCP; the first comprehensive update since 1995. Phase 1 of the process involves setting flow objectives on the lower San Joaquin River and South Delta; Phase 2 of the process involves setting flow objectives for the interior Delta downstream to Carquinez Strait. In March 2013, EPA raised concerns that the proposed flow objective for Phase 1 (35% of the

historical “unimpaired flow” on the lower San Joaquin River) would not protect designated uses, including reproduction and survival of Chinook salmon. In response to comments from EPA and others, the State Water Board is revising the Phase 1 document, but its release has been significantly delayed as the same staff from the State Water Board has been working intensively to respond to the drought emergency.

WOTUS in San Francisco Bay: Approximately 90% of San Francisco Bay’s historic tidal wetlands were lost over the 20th century, and substantial state, federal, local and private efforts continue to restore them. On 4/11/14, Corps HQ issued legal guidance to their local District effectively reversing a draft finding of CWA jurisdiction over the ~1,700 acres of dyked, unvegetated San Francisco Bay lands near Redwood City known as the “Saltworks.” The memo treats the site as upland on the basis that the “liquids” present (pumped SF Bay water) are not “water” but rather an “industrial byproduct” (EPA effluent guidelines and standards §415(p)). On 5/15/14, Region 9 initiated a process for assuming lead responsibility for the government’s final position on Clean Water Act coverage for the site. ASA Darcy informed EPA that an internal Army review is under way regarding the circumstances of the legal memo’s drafting and transmittal to the District. The potential approval of Region 9’s request by EPA HQ is pending the outcome of that review.

California UIC Program: On July 17, 2014, the Region 9 RA sent a letter to the Secretaries of CalEPA and the CA Natural Resources Agency highlighting concerns and requesting information about the State’s implementation of its underground injection control program for oil and gas-related (Class II) wells. The Region had previously audited the State’s Class II UIC program and identified implementation deficiencies and also conducted a review of aquifer exemptions that raised questions about the alignment of injection wells with EPA-approved exemption boundaries. A few weeks prior to EPA’s issuance of the July 2014 letter, the State disclosed they had identified some injection wells authorized to inject Class II fluids into very fresh aquifers that EPA had not exempted (the State subsequently shut down these injection wells). EPA’s letter requested that the State provide information about their ongoing assessment of drinking water sources that may be impacted by improper injection, documentation pertaining to aquifer exemptions in the State, and specific data about any Class II injection wells that may be injecting into non-exempt aquifers. The State is expected to submit all of the requested information within the next 2-3 months, and the Region will work closely with the CA Division of Oil and Gas and State Water Board to determine actions needed to ensure compliance with the State’s UIC primacy program and protect aquifers that could be potential sources of drinking water.

Gov. Neil Abercrombie - Hawaii

Climate Adaptation and Coral Reefs: Governor Abercrombie is a member of the President’s State, Tribal and Local Task Force on Climate Preparedness and Resilience. EPA Region 9 has identified degradation of coral reefs due to ocean acidification and bleaching as severe vulnerabilities in its Climate Change Adaptation Implementation Plan and NOAA recently listed 15 Pacific Island coral species as threatened. Region 9 is implementing a coral reef strategy which includes working with Hawaiian state agencies such as the Department of Land and Natural Resources and the Department of Health to protect and help increase the resiliency of these fragile ecosystems. The R9 Regional Administrator will participate as panelist in a workshop on Ocean Acidification to develop recommendations for US Coral Reef Task Force meeting in Maui, September 10-11.

Hawaii Drinking Water SRF: An EPA contractor is conducting a LEAN-based management review of the Hawaii DWSRF program to identify options for improving financial performance. When the final report is released at the end of September, Region 9 will review the recommendations with the Hawaii Department of Health and select actions for implementation. Region 9 is considering issuing a notice of non-compliance in September to the Department of Health, in part because of excessive ULOs, which would require the State to prepare a corrective action plan based largely on the management study.

Gov. Mark Sandoval – Nevada

Waters of the US Letter from WGA: On 3/25/14 the Western Governors expressed concern that the proposed rule clarifying protections under the Clean Water Act for streams and wetlands was developed without sufficient consultation with states and could impinge on state authority. The concerns were in a letter signed by Colorado Gov. John Hickenlooper (Western Governors' Association Chairman) and Nevada Gov. Brian Sandoval (WGA Vice Chairman). The Western Governors assert that "as co-regulators of water resources, states should be fully consulted and engaged in any process that may affect the management of their waters." However, "the conversations to date have not been sufficiently detailed to constitute substantive consultation" and that "Western Governors strongly urge both EPA and the Corps to engage states as authentic partners in the management of Western waters."

Gov. Eddie Baza Calvo - Guam

Northern District Wastewater Treatment Plant: The Department of Defense and Region 9 are exploring options for collaboration on the preparation of a feasibility study to identify the best way to upgrade the existing treatment plant to secondary treatment utilizing funds provided by DOD. EPA will be working with DOD, the Guam Waterworks Authority and other critical stakeholders.

Guam Waterworks Authority: The United States has an ongoing court order against the Guam Waterworks Authority and the Government of Guam for drinking water and wastewater violations. In addition, EPA is now requiring that Guam's two largest wastewater treatment plants upgrade to secondary treatment. Governor Calvo is concerned about the economic impacts of EPA actions on local citizens.

Northern Guam Lens, Sole Source Aquifer: Guam's sole source aquifer, the Northern Guam Lens, is potentially at risk from over-pumping and pollution impacts. The Governor's office has been looking for support for ongoing studies to measure the aquifer's health.

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<http://www.epa.gov/region09/water/tribal/tribal-cwa.html#wtrpollution>